TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1967

No. 57

W. WILLARD WIRTZ, SECRETARY OF LABOR, PETITIONER

vs.

LOCAL 153, GLASS BOTTLE BLOWERS ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CIO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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LOCAL 153, GLASS BOTTLE BLOWERS ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CIO

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INDEX

[fol. A]

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 15,759 and 16,048

[File Endorsement Omitted]

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF-APPELLANT

v.

LOCAL 153, GLASS BOTTLE BLOWERS ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CIO (GBBA), DEFENDANT-APPELLEE

On Appeals from a Judgment and Order of the United States District Court for the Western District of Pennsylvania

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APPENDIX FOR THE SECRETARY OF LABOR—
Filed August 23, 1966

AND APPENDIX FOR THE DEFENDANT-APPELLEE—
Filed October 13, 1966

* * * *

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LETTER FROM LEE W. MINTON TO JOHN MILLER.

RE: 7-12-4.

December 4, 1963

Mr. John L. Miller, Treas.
Local Union # 153—GBBA
Box 231
Avella, Pennsylvania

Dear Sir and Brother:

This in in further reference to your letter of October 24, 1963 in which you protested the manner in which the elections were conducted.

Mr. Bonus has made an investigation and it appears that the election was conducted in accordance with the desire of the local union that all International Constitutional provisions be complied with including eligibility requirements.

Nevertheless, I am continuing to look into the matter and will advise you further.

With kind regards, I am

Sincerely and fraternally,

LEE W. MINTON,
International President.

LWM:dd
cc: Joseph Bonus

[fol. 2]

IN UNITED STATES DISTRICT COURT

* * * *

COMPLAINT—Filed March 31, 1964

I.

Plaintiff brings this action under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act of September 14, 1959, 73 Stat. 519, *et seq.*, 29 U.S.C. (1958 ed. Suppl. IV) 481, *et seq.*), hereinafter referred to as the Act.

II.

Jurisdiction of this action is conferred upon this Court by Section 402(b) of the Act (29 U.S.C. 482(b)).

III.

Local 153, Glass Bottle Blowers Association of the United States and Canada, AFL-CIO (GBBA), hereinafter called defendant union, is, and at all times hereinafter mentioned has been, an unincorporated association maintaining its office in the city of Washington, County of Washington, Commonwealth of Pennsylvania, within the jurisdiction of this Court.

IV.

Defendant union is, and at all times releveant to this action has been, a local labor organization engaged in an industry affecting commerce, within the meaning of Sections 3(i), 3(j) and 401(b) of the Act (29 U.S.C. 402(i), (j) and 481(b)).

V.

Defendant local union, purporting to act pursuant to and in accordance with its bylaws and with the constitu-
[fol. 3] tion of the international union, Glass Bottle Blowers Association of the United States and Canada, AFL-CIO, hereinafter referred to as the international, conducted nominations of officers on August 8, 1963, and September

12, 1963, and election of officers on October 18, 1963, at Washington, Washington County, Commonwealth of Pennsylvania.

VI.

A member in good standing of the defendant union, acting pursuant to and in accordance with the international constitution and defendant union's bylaws, filed a protest of the conduct of such nominations and election with International President Lee W. Minton on October 24, 1963. Not having received a final decision within three (3) calendar months after invoking his internal union remedies, such member, on January 31, 1964, filed a complaint with the plaintiff herein in accordance with Section 402(a) of the Act (29 U.S.C. 482(a)), alleging violations of Section 401 of the Act (29 U.S.C. 481).

VII.

Plaintiff proceeded to investigate said complaint, and, as a result of facts shown by his investigation, found probable cause to believe that violations of Title IV of the Act had occurred with respect to the aforesaid election and had not been remedied at the time of institution of this suit.

VIII.

In the conduct of the nominations and election of its officers as aforesaid, defendant violated the provisions of Section 401 of the Act (29 U.S.C. 481) in the following respects:

[fol. 4] 1. Defendant denied to its members in good standing a reasonable opportunity to nominate candidates for office, as required by Section 401(e) of the Act (29 U.S.C. 481(e)).

2. Defendant denied to its members in good standing the right to vote for and to otherwise support the candidate or candidates of their choice, as required by Section 401(e) of the Act. (29 U.S.C. 481(e)).

3. Defendant denied to many of its members in good standing the right to be a candidate for and to hold union

office, as required by Section 401(e) of the Act (29 U.S.C. 481(e)).

4. Defendant failed to elect union officers by secret ballot among its members in good standing, as required by Section 401(b) of the Act (29 U.S.C. 481(b)).

IX.

The violations of Section 401 of the Act (29 U.S.C. 481) found and alleged above may have affected the outcome of the election, and have not been corrected.

WHEREFORE, plaintiff prays for judgment:

(a) declaring the election held by the defendant union on October 18, 1963, to be null and void;

(b) enjoining and restraining defendant union, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with it, from concealing, selling conveying, transferring, or otherwise disposing of, the property or assets belonging to said defendant union or in which it has any direct or indirect interest, until further order of the Court;

[fol. 5] (c) directing the conduct of a new election under the supervision of the plaintiff;

(d) for the costs of this action; and

(e) for such other relief as may be appropriate.

JOHN W. DOUGLAS
Assistant Attorney General

/s/ GUSTAVE DIAMOND
United States Attorney

CHARLES DONAHUE
Solicitor

JAMES R. BEAIRD
Associate Solicitor

ERNEST N. VOTAW
Regional Attorney

U. S. Department of Labor
Of Counsel

HARLAND F. LEATHERS
Attorney, Department of Justice

Attorneys for Plaintiff

[fol. 6]

IN UNITED STATES DISTRICT COURT

* * * *

ANSWER—Filed May 12, 1964

1. The averments of Paragraph i of the Complaint, being mere conclusions of the Pleader, require no affirmative response by Defendant.

2. It is denied that this Court has jurisdiction of this action under Section 402(b) of the Act referred to in Paragraph 1 of the Complaint.

3. The averments of Paragraph 3 are admitted.

4. It is admitted that Defendant is a local labor organization engaged in an industry affecting commerce within the meaning of Sections 3(i) and 3(j) of the Act as aforesaid. It is specifically denied that Section 401(b) has any application to Defendant in this case.

5. It is admitted that Defendant, acting pursuant to the letter and spirit of its International Constitution and its By-Laws, conducted nominations of officers on August 8, 1963, and September 12, 1963, and an election of officers on October 18, 1963.

6. It is admitted that a member of Defendant Union filed a protest with International Secretary Newton W. Black on October 24, 1963. As to these averments of Paragraph 6 of the Complaint pertaining to members not receiving a final decision within three (3) calendar months, after invoking internal remedies, and subsequently com-
[fol. 7] plaining to Plaintiff herein, Defendant has no knowledge as to the truth ofsaid averments and demands strict proof thereof at the time of trial to the extent same are material.

7. The averments of Paragraph 7 of the Complaint, being mere conclusions of the Pleader, require no affirmative response by the Defendant.

8. (1) It is denied that Section 401(e) of the Act was violated. It is further denied that Defendant denied its members in good standing a reasonable opportunity to nominate candidates for office.

(2) It is denied that Defendant denied to its members in good standing the right to vote for and otherwise

support the candidate or candidates of their choice, in violation of Section 401(e) of the Act.

(3) It is denied that Defendant denied to any of its members in good standing the right to be a candidate for and to hold Union office, in violation of Section 401(e) of the Act.

(4) It is further denied that Defendant failed to elect Union officers by secret ballot among the members in good standing as required by Section 401(b) of the Act as aforesaid.

9. It is specifically denied that Defendant violated Section 401 of the Act, and it is further specifically denied that any acts of Defendant herein affected the outcome of the election.

WHEREFORE, Defendant prays that this Court dismiss the Complaint filed against it.

BEN PAUL JUBBLIRER and
STUART E. SAVAGE

Of Counsel

PLONE, TOMER, PARKS & SALIGER

[fol. 8]

IN UNITED STATES DISTRICT COURT

TRANSCRIPT OF PRE-TRIAL PROCEEDINGS—March 9, 1965

COLLOQUY BETWEEN JUDGE DUMBAULD AND MR. WEINER.

* * * *

THE COURT: What I meant was, does the Government contend that in this particular case, by virtue of the rule, a corrupt and untrustworthy clique has succeeded in establishing itself in office, or are you merely attacking the general rule as such, as unreasonable?

MR. WEINER: We are attacking the rule as being unreasonable. We have no desire to indicate that there is any—

THE COURT: No maladministration of a particular group?

MR. WEINER: No. We have no basis for making such an allegation, nor do we wish to. The thrust of our position is that Congress has declared, in a statute, a purpose for granting individual union members rights in the exercise of which they will run their labor organizations, in accordance with what they deem to be their best interests. They should not be thwarted in this right.

A rule which precludes as much as 98 per cent of the union membership from exercising this right, which the Congress has seen fit to hand to the members, does precisely that, we say. It prevents the membership from having the kind of a voice in its affairs, in electing its officers, who represent these members in collective bargaining, in [fol. 9] the determination of grievances, by which they hold in their hands the economic welfare of the membership.

This the Congress, I am sure, did not intend to have as a result of such a rule. It did not want restrictive rules to prevent its purpose from being effectuated.

This is the thrust of our complaint.

THE COURT: In other words, there is no claim that there is any particular evil resulting from this election, but that future relief in future elections would be really what you are looking for.

And I gather that the elections are held in the fall. Is that right?

MR. WEINER: Every two years.

MR. PLONE: May I respond to that, sir?

May I first say that this District, your District, sir, has had the benefit of a similar question litigated before it in the *Martin* v. *Boilermakers* case decided by Judge Willson, where there was—I wouldn't want to categorize it as identical, but a similar rule for requirement of attendance of union membership, the result of which was that at the time there was going to be an election only fourteen members of the union were eligible, out of a membership of 175, which numerically is a comparison. Judge Willison found that the rule was not unreasonable.

* * * *

[fol. 10]

IN UNITED STATES DISTRICT COURT

* * * *

STIPULATION—Filed July 8, 1965

It is this 7 day of July, 1965, hereby stipulated and agreed by the parties hereto as follows:

1. This action was instituted by the Secretary of Labor under the election provisions of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act of September 14, 1959, 73 Stat. 519, *et seq.*, 29 U.S.C. (1958 ed. Suppl. IV) 481, *et seq.*), hereinafter referred to as the Act, and seeks to have an election held by defendant local labor organization on October 18, 1963, declared null and void and a new election conducted under the supervision of the plaintiff.

2. The defendant, Local 153, Glass Bottle Blowers Association of the United States and Canada, AFL-CIO (GBBA), is, and at all times hereinafter mentioned was, an unincorporated association maintaining its office in the City of Washington, County of Washington, Commonwealth of Pennsylvania, within the jurisdiction of this Court. Said defendant local labor organization is composed of approximately five hundred (500) members employed by the Brockway Glass Company, Incorporated, Washington, Commonwealth of Pennsylvania, a corporation having an annual dollar volume of business in interstate commerce in excess of one million dollars ($1,000,000.00). Defendant is, and at all times relevant to this action has been, a local labor organization engaged in an industry affecting commerce, within the meeting of Sections 3(i), 3(j) and 401(b) of the Act (29 U.S.C. 402), (j) and 481(b)). Jurisdiction is conferred upon the [fol. 11] Court by Section 402(b) of the Act (29 U.S.C. 482(b)). The defenadnt local labor organization was chartered as Local Union 153 in April 1937, by the International Glass Bottle Blowers Association of the United States and Canada, AFL-CIO (GBBA).

3. Defendant local union conducted nominations of officers on August 8, 1963 and September 12, 1963, and elec-

tion of officers on Octiber 18, 1963, in Washington, Washington County, Commonwealth of Pennsylvania. John L. Miller, a member of defendant union qualified to file a complaint with the Secretary of Labor, setting pursuant to and in accordance with the International Constitution and defendant's Bylaws, filed a complaint with the President of the International Union in a letter dated October 24, 1963, protesting the conduct of the aforesaid nominations and election of officers (Exhibit A, attached hereto and made a part hereof). Mr. Lee W. Minton, International President, acknowledged receipt of the protest by letter dated October 28, 1963 (Exhibit B, attached hereto and made a part hereof), and directed Mr. Joseph Bonus, an International Representative, to investigate the complaint concerning the conduct of the elction (Exhibit C, attached hereto and made a part hereof). Mr. Bonus, in his report to the International President dated November 21, 1963, in effect recommended denial of the protest (Exhibit D, attached hereto and made a part hereof). In his reply to International Representative Bonus dated December 4, 1963, International President Minton requested him to ". . . give some thought to calling an elec- [fol. 12] tion at least for the office of Recording Secretary or perhaps the Recording Secretary and three Trustees." On December 20, 1963, in his reply letter to Mr. Minton, Mr. Bonus stated his opinion that no election should be conducted for these offices but that ". . . the appointments should stand." (Exhibit E, attached hereto and made a part hereof). On December 31, 1963, International President Minton notified Charles Houston, Recording Secretary of defendant local union, that he had appointed an Executive Board Subcommittee to investigate further the matter (Exhibit F, attached hereto and made a part hereof). This Committee stated in its report to International President Minton dated January 21, 1964, that the complainant Miller was ineligible as a candidate under the attendance limitation noted, but recommended that serious consideration be given to ". . . an election for the office of Recording Secretary and three Trustees with the 75% attendance to run for local office waived . . ." (Exhibit G, attached hereto and made a part hereof).

Not having received a final decision within three (3) calendar months after having invoked his internal remedies on October 24, 1963, the complainant filed a complaint with the plaintiff hereon on January 31, 1964, alleging violations of the Labor-Management Reporting and Disclosure Act of 1959 (Exhibit H, attached hereto and made a part hereof).

[fol. 13] 4. After investigating said complaint and, as a result of facts shown by that investigation, finding probable cause to believe that violations of Title IV of the Act had occurred with respect to the aforesaid election and had not been remedied, the Secretary of Labor instituted the within action against the defendant on March 31, 1964, alleging certain violations of Title IV of the Act.

5. The President of the defendant local union, Leslie R. Miles, appointed member Charles Houston as Recording Secretary, and members Italo Gizoni, Peter McCraken and Edward Szygenda as Trustees, and they were installed at the meeting of the local union on October 23, 1963, when the other elected local union officers were installed.

6. Article IX, Section 1, of the International Constitution provides that: "All candidates for office, before nomination, must have attended 75 per cent of the meetings for at least two years prior to the election."

Article 4, Section 12, of the defendant Local Union's Bylaws provide that: "No member may be a candidate unless said member is in good standing and has attended seventy-five per cent (75%) of the regular local meetings since the last local election."

In order to fulfill the attendance requirements, a member must have attended eighteen (18) of the twenty-four (24) regular meetings during the period October 1961 to October 1963. In applying these attendance eligibility requirements to the defendant local union, eleven (11) local [fol. 14] union members out of a total membership composed of approximately five hundred (500) members (or about 2.2 per cent) were qualified to run for union office in the challenged election. Nominations notices, dated August 5 and August 7, 1963 (Exhibits I and J, respectively, attached hereto and made a part hereof), listed

eleven (11) members eligible for office, including the complainant John L. Miller, beside whose name in parentheses was the notation "under consideration by the International." Complainant John L. Miller was nominated for President at the nomination meeting on August 8, 1963, and ruled ineligible pending an inquiry as to his qualifications by International Representative Bonus. On August 21, 1963, International Vice President Raymond Dalton advised Mr. Miller he was ineligible for nominations, as he did not meet the attendance requirements (Exhibit K, attached hereto and made a part hereof). Similarly, at the seond nominations meeting held on September 12, 1963, complainant Miller was nominated for the office of Treasurer and was ruled ineligible to be a candidate. Defendant local union's records disclose that Miller was credited with actually attending seventeen (17) of the regular monthly meetings. He was prevented from attending one (1) of the seven (7) additional regular monthly meetings within the two (2) year period because he was hospitalized at that time at St. John's General Hospital, Pittsburgh, Commonwealth of Pennsylvania, from October 31, 1961 to November 27, 1961 (See Exhibit L, attached [fol. 15] hereto and made a part hereof). He was ruled ineligible by International Representative Bonus on August 8, 1963, and International Vice President Dalton on August 21, 1963, as not satisfying the attendance requirements because the only excused absence under the defendant Local Union's Bylaws was for work during the time of the meeting, provided the individual member notified the union within seventy-two (72) hours following the meeting of the fact that he was working (See Exhibits M and N, respectively, attached hereto and made a part hereof). In fact, the minutes of the regular monthly meeting on November 9, 1961, one of the seven (7) regular monthly meetins referred to above, indicate that John L. Miller was on the sick list at that time.

7. Complainant John L. Miller has been a dues paying member in the defendant local union for approximately twelve (12) years, and has served as Treasurer of the local union for four (4) years until the nominations and election challenged herein.

8. The 75 per cent attendance requirement has been completely waived at the discretion of the International Glass Bottle Blowers Association of the United States and Canada in other local union nominations and elections. There also has been partial waiving of the 75 per cent attendance rule, as in the case of Local 84, Kansas City, Missouri, where the attendance requirement was relaxed to the extent that absences for illness or vacation, as well as for work, were considered excusable absences.

[fol. 16] 9. Lee W. Minton, President of the International Glass Bottle Blowers Association of the United States and Canada, was advised by Frank P. Willette, Area Director, Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor, by letter dated March 12, 1964, that the investigation thus far conducted had established probable cause to believe that the election under consideration violated Title IV of the Labor-Management Reporting and Disclosure Act of 1959 in the several particulars enumerated therein, and Mr. Minton was given the opportunity to present ". . . any additional evidence bearing on the violation or on any action which the parent union proposes to take to remedy the violation." No action has been taken by the parent union or the defendant local union to remedy the violations alleged in the Complaint herein. There have been no new nominations or election of officers since October 18, 1963.

10. One of the important purposes and objectives of the delegates to the conventions of the Glass Bottle Blowers Association of the United States and Canada, AFL-CIO, in promulgating the 75 per cent attendance requirement for eligibility for local union office was to encourage attendance at local union meetings by the members thereof, in order that such members may become aware of and familiar with the workings of their local unions, the kinds of problems and methods of procedure that confront their local unions in dealing with the problems of its membership, to obtain some knowledge as a predicate to their [fol. 17] possible candidacy to union office, and otherwise to conduct themselves as trade union members to the end

that they may make their union membership more meaningful.

11. One of the provisions of the Bylaws of Local 153 is that candidates for office in the local union must have attended at least 75 per cent of the regular monthly meetings since the last local election. It also is provided therein that:

> In cases where members have to work at the time of meetings, and so notify the Recording Secretary, they shall be marked present at such meetings, provided they notify the Secretary in writing within seventy-two (72) hours following the meeting. The record of attendance compiled by the Secretary is the final local authority to determine eligibility for local office, the election of delegates to National Conventions, or such other meetings requiring elections.

Inasmuch as members of Local 153 work in a continuous operating industry and on a rotating shift in most instances, there is a substantial number of meetings which members do not attend, but for which said members may be marked present upon complying with the aforesaid requirements.

12. The meetings of the local union are held at the Washington Trades and Labor Building, 1 South College Street, Washington, Commonwealth of Pennsylvania. The regular meetings of Local 153 are required, under the provisions of its Bylaws, to be held on the second Thursday of each month and are required to commence at 8:00 p.m.

[fol. 18] 13. The International Constitution (as adopted and revised by action of the 62nd convention in 1961, Los Angeles, California) is attached hereto, made a part hereof, and marked Exhibit O. Defendant Local Union's By-laws (approved by Lee W. Minton, International President, on February 21, 1961) is attached hereto, made a part hereof, and marked Exhibit P.

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Camden, New Jersey

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210 Jones Law Building
Pittsburgh, Pennsylvania

Attorneys for Glass Bottle Blowers Association of the United States, Canada, AFL-CIO (GBBA), International Union, and Local 153 of the Glass Bottle Blowers Association of the United States and Canada, AFL-CIO (GBBA)

GUSTAVE DIAMOND
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STANLEY W. GREENFIELD
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Regional Attorney

MARSHALL H. HARRIS
Deputy Regional Attorney

United States Department of Labor

Attorneys for Plaintiff

[fol. 19] EXHIBIT A TO STIPULATION

John L. Miller
Box 231
Avella, Pa.
Oct. 24, 1963

Dear Sir,

I John L. Miller Treas. of Local # 153 am entering an appeal of our election held Oct. 18, 1963. The grounds being I do not believe enough members were eligible to run for office. Only 16 of about 600 members were eligible to run for office. Of these 16 members, 4 were already holding office, myself excluded, because the President said I wasn't eligible to run because I lacked 1 meeting of the 75% meeting requirement. I have held this office for the past four years, during which time I was hospitalized because of a back injury for one month. I was under doctors care for a few months afterwards, and unable to attend meetings. During this time I attended to my office duties myself.

Since no one opposed the Vice Chairman or Financial Secretary they were automatically placed back in office. The Recording Secretary did not run for her office again nor did anyone else, thus the President said he would appoint someone to this office. I do not see how he can be permitted to do this as he stated no one was eligible to run for the office because of the 75% meeting requirement.

I feel every member should be permitted to run for an office if he wishes and not be limited to such a small amount of men because of this 75% meeting requirement.

JOHN L. MILLER
Treas. Local # 153

[fol. 20] EXHIBIT H TO STIPULATION

John L. Miller
Box 231
Avella, Pa.

Secretary of Labor
U.S. Dept. of Labor L.M.W.P.
802 Victory Building
Pittsburgh 22, Pa.

Dear Sir;

I, John L. Miller being a member in good standing of G.B.B.A.Local Union # 153, Washington, Pa. am filing a protest on the conduct of our election held Oct. 28, 1963. Both election and nominations violate federal law in that they asked unreasonable qualifications for nomination. I appealed to the Union for corrective action and I did not get a decision in three months.

Sincerely,

JOHN L. MILLER

[fol. 21] EXHIBIT O TO STIPULATION—

CONSTITUTION OF GLASS BOTTLE BLOWERS ASSOCIATION OF THE UNITED STATES AND CANADA

Article IX, Section 1

Local Unions

Section 1. The Officers of the Local Union shall consist of a President, Vice President, Recording Secretary, Financial Secretary, Treasurer and three Trustees.

All Local Union Officers shall be elected at such meetings as specified in this Constitution and the Local Union By-Laws.

Said Local Union Officers shall serve for a term of at least two years or until their successors are elected, duly qualified and installed. All candidates for Office, before nomination, must have attended 75% of the meetings for at least two years prior to the election.

No Local Union shall allow dues to officers or appointees for services rendered, but the Local Union may fix such salaries for them as it decides.

[fol. 22] EXHIBIT P TO STIPULATION—

BY-LAWS OF LOCAL UNION NO. 153

1) Article II, Section 1

ARTICLE II

Meetings

Section 1. The regular meetings of this Local will be held the second Thursday of each month. Meetings to convene at 8:00 P.M. or the date, time, place, day also can be changed when deemed necessary by the President of this Local.

2) Article III, Sections 1-4

ARTICLE III

Officers, Committees and Their Duties

Section 1. The officers of Local Union No. 153 shall consist of a Presiden, Vice President, Recording Secretary, Financial Secretary, Treasurer, Inside Guard, Outside Guard, and Three Trustees.

Section 2. All officers shall be elected or as specified hereinafter by these By-Laws.

Section 3. Any member in good standing of this Local shall be eligible to hold office providing they have attended 75% of the meetings prior to the election.

Section 4. Said Local Union Officers shall serve for a term of at least two years or until their successors are elected.

Treasurer

Section 12. The Treasurer shall receive from the Financial Secretary all monies collected, and give receipts for the same. It will be the duty of the Treasurer to receive all money coming into the Local. He will deposit in the name of the Local No. 153 of the Glass Bottle Blowers Association. He shall make no disbursements without the sanction of the Local Union and then only by warrant or check signed by the President and Financial Secretary.

He shall present to the Local Union, at the end of each half year, an itemized statement of all money received and paid out by him.

He shall report monthly to the Local Union meetings the state and condition of all current financial matters.

He shall submit his books for inspection and audit at the end of each half year, or at any time when called upon to do so.

He shall, in co-operation with the Financial Secretary, prepare and submit a budget which shall govern the expenditures of Local Union funds thereby guaranteeing adequate reserves for necessary and approved expenditures.

3) Article IV, Sections 1, 3, 7, 12-13

ARTICLE IV

Elections of Officers and Delegates

Section 1. Nominations for officers will be held the regular meetings in August and September.

[fol. 23] Section 3. Elected local officers shall serve for a term of two (2) years or until their successors are elected, duly qualified and installed. Notice of the election of local union officers shall be sent to each member of this local union by postcard at least 15 days in advance of the election date.

Section 7. All officers except conductors and inside and outside sentinels shall be elected by secret ballot.

Section 12. No members may be a candidate unless said member is in good standing and has attended seventy-five (75%) of the regular local meetings since the last local election.

Section 13. In cases where members have to work at the time of meetings, and so notify the Recording Secretary, they shall be marked present at such meetings, provided they notify the Secretary in writing within seventy-two (72) hours following the meeting. The record of attendance complied by the Secretary is the final local authority to determine eligibility for local office, the election of delegates to National Conventions or such other meetings requiring elections.

[fol. 24]

IN UNITED STATES DISTRICT COURT

* * * *

STIPULATION—Filed July 8, 1965

It is this 7 day of July, 1965, hereby stipulated and agreed by the parties hereto as follows:

1. In the event the decision and adjudication by this Honorable Court determines the [75%] attendance requirement embodied in Article IX, Section 1, of the International Constitution, and as contained in the Bylaws of defendant Local Union 153, Glass Bottle Blowers Association of the United States and Canada, AFL-CIO, is invalid, then the parties hereto agree that an order may be entered by this Honorable court directing nominations and election for all offices of the defendant Local Union 153, Glass Bottle Blowers Association of the United States and Canada, AFL-CIO, under the supervision of the Secretary of Labor, in accordance with the provisions of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act of September 14, 1959, 73 Stat. 519, *et seq.* 29 U.S.C. (1958 ed. Suppl. IV) 481, *et seq.*), and in conformity with the International Constitution and defendant Local Union's Bylaws, so far as is lawful and practicable, to supersede the election of officers held by said defendant local union on October 18, 1963.

2. In the event the decision and adjudication by this Honorable Court determines the aforesaid attendance requirement valid, then the parties hereto stipulate and [fol. 25] agree that nominations and election for offices of defendant local union to be conducted under the supervision and direction of the Secretary of Labor, as aforesaid, to supercede the election of officers held by said defendant local union on October 18, 1963, be scheduled sixty (60) days after any final appellate decision and adjudication on the question of the validity of the 75 per cent attendance requirement embodied in Article IX, Section 1, of the International Constitution, and contained in the Bylaws of the defendant, Local Union 153, Glass

Bottle Blowers Association of the United States and Canada, AFL-CIO.

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Deputy Regional Attorney

United States Department of Labor

Attorneys for Plaintiff

[fol. 26]

IN UNITED STATES DISTRICT COURT

* * * *

TRANSCRIPT OF PROCEEDINGS—July 8, 1965

JOHN L. MILLER, a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WEINER:

Q. Mr. Miller, where do you live?
A. I live at Washington, R.D. 3 right now.
Q. Where do you work?
A. Brockway Glass.
Q. What plant?
A. Plant 7.
Q. Where is that located?
A. Washington, Pennsylvania.
Q. Are you a member of Local 153 of the Glass Bottle Blowers Association?
A. For the last sixteen years.
Q. Were you a member of any union before this?
A. Yes.

MR. PLONE: I would object to going back into the history of this man's participation in labor unions. I think we are concerned with this problem as it applies—

THE COURT: Well, I suppose he was a member at the time that the event complained of took place?

[fol. 27] MR. PLONE: Stipulated to.

Q. And you were a member of—?
A. United Mine Workers.

MR. PLONE: The thrust of my objection was the fact that we are not concerned with the United Mine Workers.

THE COURT: Yes, that is irrelevant and that may be stricken.

Q. Mr. Miller, have you been interested in the affairs of Local 153?

A. Certainly have.
Q. Did you hold office at the time of the last election?
A. Yes, sir.
Q. What office?
A. Treasurer.
Q. How many terms did you hold that office?
A. Two.
Q. Did you go to meetings regularly while you were a member of Local 153?
A. I went to everyone that I could possibly be at.
Q. In the stipulation which was just filed with the Court we have said that between the period of October 18, 1961 to October 18, 1963, the date of the election that is challenged in this case, you attended seventeen meetings, monthly meetings, of the local union. Will you tell the Court why you did not attend the remaining seven meetings?
A. Well,—
MR. PLONE: If our Honor please, I think that re- [fol. 28] quires, with your permission, a challenge only with respect to specificity. In the answer we would like to have the reasons for not attending each and every one of these seven meetings rather than a general statement, so we can identify the meetings that he did not attend.
THE COURT: Yes. In other words, maybe you were sick at one meeting or your wife was sick at the time of another meeting and so on; so try to indicate in each case what it was that kept you away.
THE WITNESS: Yes, sir, I can answer.
THE COURT: Go ahead.
THE WITNESS: The meetings—so-called—that counsel over there is talking about, was under—all was under one sickness. I had a back injury and I was off. I was in St. John's Hospital over here for a month, and under a doctor's care the rest of the time. From 10/24/61 to 3/17/62 I was under Dr. McLaughlin's care in the Jenkins Arcade Building.
THE COURT: In other words, you are saying that all the meetings that you missed were missed for the same reason, your disability?

THE WITNESS: All but one, sir; and this one I should have had credit for, for this reason; my wife—

MR. PLONE: If your Honor please, I am going to have to know the identity—

[fol. 29] THE WITNESS: I am going to tell you it.

THE COURT: You say "this one," but we don't know what date it was or why you called it "this one."

THE WITNESS: August of 1962.

THE COURT: All right.

THE WITNESS: My wife had a miscarriage and I took her to the hospital and while she was in the delivery room I came down to the meeting and discharged my duties as treasurer of the local union by passing the checks and everything out to them. At the time when I got there the meeting was pretty well underway—on the way of being over, but I still got there as treasurer of that local and discharged my duties and went back to the hospital, and I didn't get credit for this meeting, which I thought I should have for that reason.

Outside of that, sir, them are the only meetings I ever missed in that local union.

Q. Now, Mr. Miller, have you attended many meetings during the past year?

A. No, sir.

Q. Why not?

A. For the simple reason—why go when you get treated like that and when I try to be a good union member and then—

* * * *

MR. WEINER: I will withdraw the question.

[fol. 30] Q. Were you acquainted with the business affairs of Local 153?

A. Yes, sir.

Q. And this was during the period 1961 to 1963?

A. Right.

Q. And did you participate actively in the various activities that you have just enumerated?

A. Right.

THE COURT: Is there anything else on direct?

MR. WEINER: If your Honor please, that is all we have to offer.

THE COURT: Do you wish to cross-examine?

CROSS-EXAMINATION

BY MR. PLONE:

Q. Mr. Miller, you held the office of treasurer of Local 153 for two terms, that correct?

A. Right.

Q. The first time was from October, 1959 to October, 1961, is that right?

A. Yes.

Q. And you presented yourself for nomination, or were presented for nomination in 1959 under the 75 per cent rule, is that correct, and you met that rule at that time?

A. Right.

Q. And you presented yourself in 1961 under the 75 per cent rule, did you not, and you met that rule, that correct?

A. Yes.

[fol. 31] Q. So that the question is what happened to your attendance between 1961 and 1963, is that correct?

A. Right.

Q. Your complaint is your lack of credit for meeting attendance affecting your standing for the 1963 election to be held, I believe it was, in October, 1963, that correct?

A. Right.

Q. Now, you claim, I presume to have a good memory? You are testifying this morning from memory, are you not?

A. Me?

Q. Yes.

A. I am testifying to my best ability. There are some things I cannot remember.

Q. Let us see what you can and cannot remember. Did you attend the meeting in October, 1961?

A. In October——

Q. Before your operation?

A. Before my operation?

Q. In October, 1961?

A. No. I was under a doctor's care.

Q. You did not attend that meeting?

A. No.

Q. Did you attend the meeting the month after your operation, in December 1961?

A. No. I was not allowed to.

Q. Did you attend the meeting in January, 1962?

A. January of 1962?

Q. That is two months after your operation?

A. No.

Q. Did you attend the meeting in February, 1962? That is three months after your operation—three or four months.

A. No.

[fol. 32] Q. Did you attend the meeting of March, 1962?

A. March? No. I wouldn't say positive, but I don't think I did. I think I was still under the doctor's care.

Q. Did you attend the meeting of April, 1962?

A. I couldn't answer you truthfully on it. I couldn't say I did or didn't.

Q. How about May, 1962?

A. As far as I know, I attended those meetings, yes.

Q. May? June?

A. Yes.

Q. Did you attend the meeting of July, 1962?

A. Yes.

Q. Did you attend the meeting in August, 1962?

A. In August, yes.

Q. Did you attend the meeting of September, 1962?

A. Yes.

Q. Did you attend the meeting in October, 1962?

A. Yes.

Q. Did you attend the meeting in November, 1962?

A. November?

Q. A year after your operation. I will help you out.

A. Yes, I know when it was. I would say yeah, I was there.

Q. Did you attend the meeting in December, 1962?

A. I would say yeah.

Q. Did you attend the meeting in January, 1963?

A. January?

Q. January, 1963?

A. I was there.

Q. Did you attend a meeting in February, 1963?

A. I was there.

Q. Did you attend the meeting in March, 1963?
[fol. 33] A. I would say I was there.
Q. April, 1963?
A. I would say I was there at all of them.
Q. I am not interested in general statements. Did I ask you about April?
A. Yes.
Q. May, 1963?
A. I would say yeah.
Q. Were you there in June, 1963?
A. I would say yeah.
Q. And July, 1963?
A. I would say yes.
Q. September, 1963?
A. I will say yeah.
Q. How about August?
A. I will say yeah.
Q. Were you there in—Well October would have no significance.
I asked you about September, 1963?
A. Yes. The answer is yes.
Q. Now, of course, you were treasurer during all this period and one of your duties was to attend every meeting to make a report?
A. Yes, I done that sir. I took care of my duties——
Q. I am not asking you ——
A. You asked me a question.
Q. Mr. Miller, will you just not continue talking?
A. I have to answer.
Q. Please, you will answer the question posed, and I was going to object to the Judge that your answer was not responsive.
I asked you whether you attended every one of the meet-
[fol. 34] ings you claim you attended in person to make the report, did you?
A. Yes.
Q. Did you also know that it was your responsibility as treasurer to attend every meeting to make such a report?
A. Definitely.

Q. Now, Mr. Miller ——

A. Yes.

Q. —are you familiar with the attendance reports of Local 153?

A. Yes.

Q. Have you seen them before?

A. Yes.

Q. I show you what appears to be the attendance records of 153 for the years including 1961, 1962 ——

MR. WEINER: Just a moment. May I take a look at these records. What kind of records are you asking questions about here? These have not been introduced. I know nothing about these records.

MR. PLONE: I think I have a right to ask this witness if he recognizes them.

THE COURT: I gather that the witness recognizes the book. Do you?

THE WITNESS: No, sir, I don't recognize this book. I recognize a card that we filled out—an attendance card that we filled out at the end of the meeting. At the end of the meeting they passed out cards and you put your name and clock card number on and your address and they [fol. 35] draw it—two $5. drawings, and that is how they take the attendance of your meetings.

Q. Did they enter the card in the book?

A. The financial secretary.

Q. Is this the book they were entered into?

A. As far as I know, I guess it is the book.

Q. And you have seen these books before, Mr. Miller?

A. Yes.

Q. And these are the books that attendance cards are entered into?

A. Right.

MR. PLONE: I would like to have these marked for identification—the first, Defendant's Exhibit, I guess, 1 and 2, using the black book as 1.

Q. By the way, while the Government is looking at these books, these are the books that determine whether or not you are are eligible under the 75 per cent rule, is that correct?

A. I couldn't tell you, sir.

Q. Don't they look at these books?

A. I couldn't tell you.

MR. WEINER: Are you marking these for identification?

MR. PLONE: For the moment. I am going to move their admission with a request to withdraw them and make copies. They are original records and cannot be replaced.

THE COURT: Any objection?

[fol. 36] MR. WEINER: Yes, definitely. We object to the admission of these books; not properly identified and nothing there to indicate who kept these records.

MR. PLONE: If your Honor please, the witness testified that he recognized these books as reflecting the attendance of the parties ——

THE COURT: It seems to me that the witness sufficiently identified it.

Q. Mr. Miller, what is your clock number?

A. 767.

Q. And you know that you are marked present and absent according to your clock number?

A. No, I don't think I am.

Q. Well, I show you what is now in evidence as Defendant's Exhibit 1, crediting with attendance various members of Local 153, including yourself, and I want to be sure I am turning to the right year.

MR. PLONE: May I have the assistance of the records secretary?

THE COURT: All right.

This time that you speak of that you were held not eligible, who told you that you were not eligible?

THE WITNESS: The president of the local, Mr. Miles—President Miles.

THE COURT: And did he show you any book or anything to show that you had not been at the proper number of meetings?

[fol. 37] THE WITNESS: No, sir. All he'd tell me was I'm out of order, not eligible and that was it.

Q. Now, Mr. Miller, the attendance book, which I will state for the record is subject to testimony on support, is the book that is used to show you are eligible for office—

your eligibility for office—shows that you attended in 1961 a meeting in January, that you skipped certain meetings not pertinent to this case, you then went to a meeting in May?

MR. WEINER: What year is this?

MR. PLONE: 1961.

Q. You went to the June meeting in 1961; you missed the July meeting in 1961; you went to the August meeting in 1961; you missed the September meeting and you went to the October meeting in 1961. You went to the hospital in October, 1961 and you were there over the time that the November meeting took place?

A. Right.

Q. You were absent because of this condition?

A. Right.

Q. We all agree—the Government and I agree. However you were marked present and were present in the meeting of December, 1961? 767 is your clock number?

A. Right.

Q. You were marked present and attending the meeting of January, 1962. You were marked as present and attending the meeting in February, 1962. You were marked present and attending the meeting in March, 1962, likewise for April, 1962, May, 1962. You missed [fol. 38] the meeting in July, 1962. You attended the August, 1962 meeting—that the time you say you came in late?

A. That's right.

Q. Because your wife was in the hospital. But you were credited for having attended that meeting?

A. Yes.

Q. You were absent in September and October, 1962. You were marked present and attending the November meeting of 1962, the December of 1962 meeting, and I will now turn to Defendant's Exhibit 2. You were marked present and attending a meeting in January, 1963. You were marked absent in February, 1963. You were marked present and attending the meetings of March, April and May of 1963. You absented yourself from the meetings of June and July, 1963. You were working, and gave a slip to the union in August, 1963,

and were marked present even though you were not at the meeting, that correct?

A. Yes.

Q. That is exactly what the constitution says and you were given full credit, am I correct?

A. Yeah, yeah.

Q. You attended in person the meetings of September and October, 1963, and that is what we are concerned with at this point. There is some other history thereafter.

A. Yeah. I was off ——

MR. PLONE: Just a moment. There are no questions pending.

If your Honor please, so that the record is clear, I started prior to the critical period in reviewing the meeting attendance records with the witness. I believe I started early in 1961, and, of course, the critical period here started in October, 1963 and ends October—forgive [fol. 39] me, sir—starts October, 1961 and ends up to and including the month of September, 1963. That is in the testimony, but I felt that I would like to indicate that this critical period commenced in October, 1961, and that the record, of course, is clear as to what the attendance record shows for that critical period.

THE COURT: Any re-direct?

RE-DIRECT EXAMINATION

BY MR. WEINER:

Q. You were just asked a series of questions about your attendance at meetings. Would you give the Court any explanation that you have for ——

A. Yes, sir.

MR. PLONE: I object to that, your Honor. The record will show seventeen meetings including the one he is fussing about, and when he was supposed to be flat on his back after the operation, he went to meetings and was credited with them.

MR. WEINER: That is what we want him to explain.

MR. PLONE: There is nothing to explain.

MR. WEINER: Mr. Plone, you asked him a series of questions and I think this witness should be given an opportunity to make an explanation.

MR. PLONE: If your Honor please, is this anything other than repetition of what he already said, that the meetings he did not attend, he was sick at the time?

[fol. 40] THE COURT: Yes, but he didn't give, actually, the time he was off, the time that he first got injured.

Give us all the details of your injury.

THE WITNESS: August 1st, 1960, I first got injured and I was doctoring ——

* * * *

MR. PLONE: The record shows that he went to the meetings, one on the month after the operation, the second, third, fourth and fifth months and was credited with attending those meetings. His absence started long after this series of events.

THE COURT: Is everybody now satisfied with the state of the record.

THE WITNESS: No.

MR. WEINER: I am satisfied. We have no need to proceed further at this point.

THE COURT: Is there anything else that you want to say?

THE WITNESS: As I say, it's a long time and it could be that my wife is not sure of that date of that miscarriage and neither am I; I tried to get it from the doctor and couldn't get it, but Brother Miles knows it—if he tells the truth. When he comes up here he will state that fact.

[fol. 41] FRANK J. BUCHEK, a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JUBELIRER:

Q. What is your full name, sir?
A. Frank J. Buchek.
Q. Where do you live?
A. Washington, Pennsylvania.
Q. What is you address?
A. 3000 West Chestnut.

Q. What is your present occupation?
A. I am a shipper in Brockway Glass Plant No. 7.
Q. And how long have you been employed there?
A. Fifteen years.
Q. Are you a member of the local union?
A. Yes, I am.
Q. How long have you been a member of the local union?
A. Fifteen years.
Q. Do you hold any office in the union at the present time?
A. Recording secretary.
Q. And how long have you been recording secretary?
A. Almost a year.
Q. Now, as recording secretary of the union do you have in your custody and possession the records of the union kept in the regular course of the business of the union?
A. Yes, I do.

[fol. 42] MR. JUBELIRER: Mark these Defendant's Exhibit 3 for identification.

(So marked by the clerk.)

MR. JUBELIRER: Let the record show that I am handing Defendant's Exhibit 3 for identification to counsel for plaintiff in this case for examination.

Q. Now, I show you a document which has been marked for identification as Defendant's Exhibit No. 3 and ask you to identify this document.
A. These are John Miller's attendance records for the meetings of the local.
Q. Beginning October, 1961, through September, 1963, is that correct?
A. Right.
Q. Are you familiar with the signature of John L. Miller?
A. Yes, I am.
Q. And are you familiar with his signature by reason of being recording secretary and also a member of the business committee of the local union?
A. Right.

MR. JUBELIRER: We offer into evidence, your Honor, Defendant's Exhibit No. 3.

THE COURT: I presume it is understood that these are the original slips which Mr. Miller testified he signed?

MR. JUBELIRER: In person.

[fol. 43] THE COURT: All right. Without objection they will be received.

Q. There are sixteen attendance cards, Mr. Buchek; the one that is missing is August of 1962. I show you the document which is now in evidence as Defendant's Exhibit No. 1 and ask you if this Exhibit—if in this Exhibit, August of 1962 does not appear in this record, that John L. Miller was credited with being present in August, 1962?

A. According to the book, yes.

Q. Do you attend the meetings regularly?

A. Yes, I do.

Q. And approximately how many persons are generally in attendance at the regular meetings?

A. Well, they vary. There are 30, 40 or 50 people at each meeting.

Q. Now, how are the meetings conducted with reference to peace and good order?

A. Very good, I think very good, very well.

Q. Is there any fighting going on at the meetings in the sense that persons are argumentative or needling the members who wish to speak?

A. No. You have the buzz of people that express their opinion, but you have no confusion or anything.

Q. You do have differences of opinion expressed?

A. Right.

Q. Are the meetings disorderly?

A. No, they are not.

Q. Does each member of the union know who is in attendance at the meetings, and so have the right of free speech, the right of expression of speech?

A. They do.

[fol. 44] Q. Is anyone denied the right of free speech at such meetings?

A. No, they are not.

MR. JUBELIRER: Let the record show, your Honor, that there is no such charge presented by the Government to the effect that individuals are denied the right of free

speech at meetings; if such were the case, we would assume that the Government would so charge.

MR. WEINER: This is pure argument on the part of counsel. There is nothing in the record to indicate this at all as evidence.

THE COURT: Well, that is what he is saying, so I guess there is no dispute on that point.

Q. Referring to Exhibits 1 and 2 again, being the attendance books, are those Exhibits the official records of the union which determine the eligibility of members of the union for union office?

A. I don't quite ——

Q. Do the attendance records reflected in Exhibits 1 and 2—Exhibits 1 and 2—are they the official records of the union which determine the eligibility of union members for union office?

A. They are.

MR. JUBELIRER: That's all, sir.

THE COURT: Any cross-examination?

[fol. 45]

IN UNITED STATES DISTRICT COURT

* * * *

OPINION—Filed August 26, 1965

DUMBAULD, J.

The question for decision here is whether a provision requiring attendance at 75% of the regular meetings of a union for a two-year period since the last previous election in order to be eligible as a candidate for office in the union is or is not among the "reasonable qualifications" permitted by Section 401 (e) of the Labor-Management Reporting and Disclosure Act of September 14, 1959, (commonly known as the Landrun-Griffin Act), 73 Stat. 532, 29 U.S.C. 481 (e).

That section provides:

> "(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and *every member in good standing shall be eligible* to be a candidate and *to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed)* and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof." [1]

[fol. 46] Section 402, 29 U.S.C. 482, provides enforcement procedure. Upon investigation of a complaint duly

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[1] Italics supplied. Section 504, not pertinent here, prohibits holding of union office by Communists or convicts guilty of certain crimes. Incidentally, section 504 was held unconstitutional by the Supreme Court in *U.S.* v. *Brown*, 381 U.S. 437, 449 (1965) as being a bill of attainder (or legislative trial) at least as far as Communists are concerned. Perhaps convicts can still be excluded from union office [as they can be from the practice of medicine, *Hawker* v. *New York*, 170 U.S. 189, 191, 196 (1898)], as they must necessarily have had a judicial trial.

filed by a member of a labor organization, the Secretary of Labor, if he finds probable cause to believe that a violation of the election provisions of the Act has occurred and has not been remedied, may bring a civil action, against the union as an entity, to set aside the election and direct the conduct of an election under supervision of the Secretary.

If, upon a preponderance of the evidence after a trial upon the merits, the Court finds that the violation of Section 401, "may have affected the outcome of an election", the Court shall declare the election to be void and direct the conduct of a new election under the supervision of the Secretary.

It will be noted that the Court, in order to declare the election void, must find not only the existence of a violation but that the violation may have affected the outcome of the election.

The Court is vested with specific statutory jurisdiction in a proceeding *de novo* styled a civil action. This remedy is exclusive. *Calhoon* v. *Harvey*, 379 U.S. 134, 140 (1964).

The Court is not exercising the function of judicial review of an administrative agency, where the doctrine of "primary jurisdiction" would apply, and the scope of re-[fol. 47] view would ordinarily be limited to the question of whether there was error or lack of substantial evidence to support the agency's conclusions. *Texas & Pac. Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426, 442 (1907); *Rochester Tel. Corp.* v. *U.S.*, 307 U.S. 125, 139-40 (1939); *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 477-88 (1951).

Here it can in no wise be contended, as Judge Learned Hand does in the instance of due process, that the courts are usurping power of the same sort which legislators exercise (though such usurpation is justified in order to prevent frustration of the governmental enterprise). Hand, *The Bill of Rights*, 29, 39 (1958). In our situation the power of the courts *is* expressly delegated by statute, and simply serves to bring into sharper focus a telescope which has already been pointed by Congress toward the

desired objective. *U.S.* v. *Curtiss-Wright Corp.*, 299 U.S. 304, 329 (1936).

We are therefore authorized to exercise a legitimate discretion with respect to the intrinsic propriety, wisdom, or expediency of the regulations under consideration when determining their reasonableness, and not merely to pass judgment on the issue of bare power as to whether another agency of government has acted *ultra vires*. Stated differently, the distinction may be illustrated by saying that our function is somewhat comparable to an appeal in equity as distingquished from a writ of error, or to a direct appeal as distinguished from the collateral review [fol. 48] permitted under the traditional or classical writ of habeas corpus. We must determine for ourselves on the merits the substantive question whether the result reached is right rather than merely the formal question whether someone else had power to pronounce and declare that it was right.

The By-Laws of defendant Local Union No. 153 of the Glass Bottle Blowers Association provide, in Article 2, sec. 1 that regular meetings will be held the second Thursday of each month at 8:00 P.M., unless otherwise directed. Articles 3 and 4 provide that all offices shall be elected, by secret ballot, for a term of two years. [This is in conformity with the requirements of 29 U.S.C. 481 (b)].

Article 4, sec. 12 is the crucial provision in this case. It ordains that: "No members [sic] may be a candidate unless said member is in good standing and has attended seventy-five (75%) of the regular local meetings since the last local election". This is supplemented by Art. 4, sec. 13, which provides that: "In cases where members have to work at the time of meetings, and so notify the Recording Secretary, they shall be marked present at such meetings, provided they notify the Secretary in writing within seventy-two (72) hours following the meeting".

Local 153 has approximately 500 members, of whom 11 (or 2.2 percent) were eligible for office at the challenged election held on October 18, 1963. The eligible list of eleven included the names of one Paul Gamber ("if he [fol. 49] attends the next 2 meetings") and of one John

L. Miller (with the notations "Under investigation" or "Under consideration by International"). The International on August 8 and 21, 1963, informed Miller that he was ineligible, by reason of failure to meet the attendance requirement. Miller had been Treasurer, and was proposed for monimation as President and as Treasurer at the 1963 election, but held to be disqualified under the By-Laws. Upon Miller's complaint, the Secretary of Labor filed the instant suit.

By reason of rotation in shifts, 469 members of the union are required to be at work on the date of union meetings at least six times during the two-year period of eligibility determination. Defendant computes that this means that as to 93.8% of the members, by virtue of the excusal provisions of Art. 4, Sec. 13, the 75% attendance requirement is reduced to a 50% requirement (Brief, p. 3). However, with respect to 31 workers not on rotating shifts, the 75% requirement is fully applicable without any abatement.

In view of the policy of the Act to promote equal rights among union members [29 U.S.C. 411(a) (1)] and of the terms of Section 401 (e) itself, it would appear that the rights of individual members as such are at issue, and hence that we must consider the effect of the challenged By-Law in accordance with its literal terms, and as applied to the minority of members upon whom it bears hardest. *Shelley* v. *Kraemer*, 334 U.S. 1, 22 (1948); *Lucas* v. *Colo. Gen. Assembly*, 377 U.S. 713, 736-37 (1964).

[fol. 50] Plaintiff urges in support of its view the following language from Regulations issued by the Secretary issued on December 12, 1959, 29 C.F.R. 452.7(b):

> "(b) The question of whether a qualification is reasonable is a matter which is not susceptible to precise definition and in the last analysis will be determined by the courts. Under certain circumstances a prerequisite for such candidacy may on its face appear to be reasonable, but this would not be controlling if, as a matter of fact, the effect of its application would be unreasonable and inharmonious

with the intent of the Act's election provisions. For example, a requirement that to be eligible to be a candidate for office an individual must have been a 'member in good standing' for a prescribed period of time, such as two or three years, would not be, in many instances, an unreasonable qualification. However, should the actual effect of such qualification in a particular case be to disqualify from holding office all but a handful of the labor organization's members, its reasonableness would be subject to serious question."

As plaintiff contends, the views of the Secretary are of great weight. Not only does this Court have great respect for the Secretary, but this Court agrees 100% with every word that is said in the quoted passage. The trouble is that all that is said is that the question of reasonableness is a difficult one and must ultimately be decided by the courts in the light of the facts in particular cases. We agree.

Defendant argues that the test of reasonableness here is the same as that when the constitutionality of legislation is challenged under the due process clause: in other [fol. 51] words, that the "rational basis" rule applies. That is to say, the By-Law as adopted by the union must be upheld if a reasonable mind would have a good reasons for adopting it. It must be upheld if it is rationally relevant to a legitimate regulatory purpose. As stated by Chief Justice Warren in *Bolling* v. *Sharpe*, 347 U.S. 497, 499-500 (1954): "Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective". A court does not act as a "superlegislature" to weigh the wisdom of regulations. *Day-Brite Lighting Inc.* v. *Missouri*, 342 U.S. 421, 423, 427 (1952); *Ferguson* v. *Skrupa*, 372 U.S. 726, 729-32 (1963).

It is then argued that such a good reason is to encourage participation in union affairs and attendance at meetings in order to become familiar with the workings of the organization before undertaking to serve as a union officer.

Another analogous situation in which courts pass on "reasonableness" is in Antitrust cases. Here, however, the insertion of that standard into the legislation as enacted by Congress is a pure judicial creation divised first by Mr. Chief Justice White in *Standard Oil Co.* v. *U.S.*, 221 U.S. 1, 60, 63-67 (1911).

[fol. 52] More to the point is the analogy to the function of the Interstate Commerce Commission, and similar regulatory agencies, in establishing "just and reasonable" rates. 49 U.S.C. 15. In other words, Congress itself enacts a nonspecific standard, the application of which to specific situations is entrusted to the judicial process of inclusion and exclusion.

The Court therefore in a particular case must not only consider the existence *vel non* of a scintilla of rational support for the rule put forth, but must (by a process similar to that prescribed in the *Universal Camera* case), take into consideration the entire situation presented by the record, and give due weight to every aspect of the facts established. In other words, the Court must also inquire whether the legitimate purpose sought to be achieved could be attained in a manner less destructive of other legally protected interests. *Schneider* v. *Irvington*, 308 U.S. 147, 162 (1939); *Henry* v. *Mississippi*, 379 U.S. 443, 447-49 (1965). We note that there may be a fairly extensive "zone of reasonableness" and that comparison with comparable practices may be a standard for determining reasonableness. *Georgia* v. *P.R.R. Co.*, 324 U.S. 439, 460-61 (1945); *Youngstown Sheet & Tube Co.* v. *U.S.*, 295 U.S. 476, 480 (1935).

Moreover, the determination must seek to give effect to the policies of the Act. Reasonableness is not to be assessed *in vacuo*, but in the light of the purposes which the [fol. 53] Congress sought to achieve and the evils which it sought to eliminate. Union democracy, effective self-government, abolition of oligarchical cliques and self-serving union officers were in the forefront of Congressional thinking. Section 401 itself seeks to open the path of eligibility to office to all union members in good standing, except where restrictions of reasonable character, and uniformly imposed, may be appropriate. *Mamula* v. *Steel-*

workers, 304 F. 2d 108, 110-111 (1962); 86th Cong. 1st Sess. Sen. Rep. No. 187, p. 20, appearing at p. 16 of Vol. 1 of *Legislative History* of the Act, published by the NLRB, Washington, 1959. It must also be remembered that restrictions on eligibility also constitute a corresponding restriction on the right of choice by other members. *Fogle* v. *Steelworkers*, 230 F. Supp. 797, 798 (W.D. Pa. 1964).

Plaintiff argues that the 75% requirement has no rational relation to any legitimate labor union objective. This contention in its broad form is obviously untenable, as it is a very proper objective to encourage attendance at union meetings, and to require office holders to have acquired a sufficient familiarity with union affairs to be properly qualified to discharge their trusts effectively and in keeping with the sentiments of the membership. Past conduct is often a proper test of future fitness. [See cases collected in Dumbauld, *The Constitution of the United States* (1964) 199-200.

[fol. 54] Plaintiff stands on more solid ground in arguing that the requirement *goes too far*. This contention is three-pronged: (1) 75% is too high a percentage; (2) the provision for excuses is too rigid, being limited only to work on the job during meetings; (3) the effect of the rule as applied here results in "only a handful" of eligibles (2.2% of membership qualified).

To select a particular percentage of attendance as being reasonable and hence permissible is akin to the task of determining what percentage of market control is necessary to establish the existence of a monopoly. On this issue a reversed Judge, Learned Hand, once said "it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three percent is not." Ninety was enough, however. *U.S.* v. *Aluminum Co. of America*, 146 F. 2d 416, 424 (C.C.A. 2, 1945). We conclude that 75 is too high a percentage when combined with the strict rule regarding excuses.

To be reasonable a rule must give appropriate recognition to human nature and the normal needs of a workman in his everyday life. Union members can not be expected to devote undeviating attention to union business, to the

neglect of their health, family obligations, vacations and the usual pleasures and vicissitudes of life. They do not form a military community or a religious order, separated from the world at large.

[fol. 55] A rule which limits the eligible group to 2.2% of the membership seems to be too harsh. The only judicial precedent cited by counsel is *John C. Martin* v. *Boilermakers*, W.D. Pa. Civil No. 969 Erie, where on June 26, 1963, my esteemed colleague Judge Willson upheld the reasonableness of the eligibility requirements of that union's constitution. However, the requirement there was only one meeting out of each quarter of the calendar year and the quarter immediately preceding nominations. Moreover, the provision for excuses was liberal: it recognized "personall illness, International or District or Local Lodge duties, regular employment or some other unavoidable situation". There 14 members out of a total of 175 were found to be qualified (a figure in excess of 10% of the membership).

Under these circumstances, Judge Willson said (and I agree):

> "Plaintiff, however, seems to make a blank charge that the amendment requiring the attendance at one meeting during each of the five quarters to become eligible to hold office is, per se, an unreasonable regulation. However, this contention, if seriously made, is rejected because it seems very clear to the court that the regulation is reasonable. Certainly there is nothing illegal about it, not [sic] does it appear burdensome. The rule is almost the minimum attend-
> [fol. 56] ance requirement. It simply requires that a member attend one meeting in each three month period. But, it is to be noticed that he may be excused from that by illness or if his work interferes. The language which justifies no attendance is broad. It says:
>
> > 'and (d) have attended at least one (1) meeting out of each quarter of the calendar year and the quarter immediately preceing nominations for office unless prevented by personal illness, Inter-

> national or District or Local Lodge duties, regular employment or some other unavoidable situation.' Article XXVIII, p. 111)
>
> To hold that such a regulation is unreasonable would hold in effect that there can be no attendance requirement whatever in this union. I find the regulations as adopted at the International Convention to be reasonable in all respects."

In order for there to be a real choice in the selection of officers, a system of screening ought to produce as eligibles at least twice the number of officers to be elected. Out of the air, I should take 10 percent of the membership as the minimum number from which nominations and elections are to be made.

Art. 3, sec. 1 of defendant's By-Laws provides for the election of ten officers. The eligible list included only eleven names (including Gamber and Miller, thus ulti- [fol. 57] mately nine or ten). This did not give the members a chance to choose between two full slates. In fact there were no candidates for four offices, and the present incumbants thereof are serving by appointment to fill vacancies, in apparent violation of Art. 3, sec. 8 which calls for a special election from eligible candidates. But the paucity of eligible candidates would result in impossibility of performance if the procedure of Art. 3, sec. 8 were adhered to. The majority of the members preferred to avoid the expense of a special election and International representative Bonus recommended that the appointed officers continue to serve as "those members appointed will cooperate with us, if necessary, at anytime." Stipulation, Ex. D, E, and G.

Considering the combined effect of the three objections urged by plaintiff, we conclude that the requirements imposed by the By-Laws are not "reasonable qualifications" within the meaning of Section 401 (e).

That is not the end of the matter, however. To direct a new election the Court must find that the violation of Section 401 (e) "may have effected the outcome of an election". As was true in *Wirtz* v. *Hod Carriers*, 211 F. Supp. 408, 413 (W.D.Pa. 1962), this factor of causation has not been adequately established.

The evidence shows that complainant Miller voluntarily absented himself from meetings on occasions not justified by sickness or other unavoidable emergency, and thus his [fol. 58] failure to qualify was not due to the existence of the unreasonable requirements of the By-Laws but to his own voluntary unwillingness to comply therewith.

Hence it seems inadvisable to decree the holding of a new election. It will be preferable to await appropriate action enabling the next election to be held in full conformity with the Act as judicially expounded.

[fol. 59]

IN UNITED STATES DISTRICT COURT

JUDGMENT—August 26, 1965

AND NOW, this 26th day of August, 1965, after trial and hearing argument of counsel and receipt of briefs, for the reasons set forth in the foregoing opinion,

IT IS ADJUDGED, DECREED, AND FINALLY DETERMINED that the action herein be and the same hereby is dismissed, the Court retaining jurisdiction of the cause for such further action, if any, as may be required in the event that the Secretary shall have found cause to file a complaint by reason of alleged violations of the Act of similar character in connection with the next regularly ensuing election of officers of defendant union.

/s/ DUMBAULD
United States District Judge

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[fol. 60]

IN UNITED STATES DISTRICT COURT
FOR THE THIRD CIRCUIT

* * * *

ORDER—February 25, 1966

Present: HASTIE and SMITH, *Circuit Judges*, and KIRKPATRICK, *District Judge*.

Upon consideration of the motion by plaintiff, appellant in the above entitled case, and after hearing,

It is ORDERED that the cause be and it hereby is remanded to the District Court and leave be and hereby is granted plaintiff to apply to the District Court to consider and rule upon a post-judgment motion to be made on behalf of the plaintiff in that Court;

It is Further ORDERED that jurisdiction of the appeal be and it hereby is retained and that the time for filing and serving the brief and appendix for appellant shall commence to run from the filing with this Court of the supplement to the record, consisting of proceedings in the District Court subsequent to this remand.

By the Court,

WILLIAM H. HASTIE
Circuit Judge

Dated: February 25, 1966

[fol. 61]

IN UNITED STATES DISTRICT COURT

* * * *

MOTION FOR AN ORDER TO DECLARE ELECTION VOID AND INVALID, ETC.—Filed March 21, 1966

AND NOW, comes the United States of America by Gustave Diamond, United States Attorney for the Western District of Pennsylvania and Stanley W. Greenvield, Assistant United States Attorney, and moves this Court for an Order declaring the regular general election of officers of Local 153, Glass Bottle Blowers Association of the United States and Canada on October 12, 1965, invalid and that a new election under the supervision of the Secretary of Labor be held, and in support thereof asserts the following:

1. By opinion entered on August 26, 1965, for this Court held that the by-law requiring candidates for union office to have attended seventy-five percent (75%) of the union regular meetings during the two year period since the last election was held, was an unreasonable qualification for candidacy, in violation of Section 401(e) of the Labor Management Reporting and Disclosure Act, 29 U.S.C. 481(e).

2. This Court further noted in its opinion that:

> "It seems inadvisable to delay the holding of a new election. It will be preferable to await appripriate action enabling the next election to be held in full conformity with the Act as judicially expounded".

[fol. 62] 3. The Judgment accompanying the Court's opinion was also entered on August 26, 1965, dismissing the action herein:

> "The Court retaining jurisdiction of the cause for such further action, if any, as may be required in the event that the Secretary shall have found cause to file a complaint by reason of alleged violations of the Act of similar character in connection with the

next regularly ensuing election of officers of defendant union."

4. The United States Department of Labor advises that the defendant union conducted its regular general election of officers on October 12, 1965, with the by-law declared invalid by this Court remaining in effect.

5. The defendant union's election held on October 12, 1965, under the provision and with the application of the seventy-five percent (75%) by-law, was in contravention of this Court's judgment holding said by-law to be invalid.

6. On February 25, 1966, the Third Circuit Court of Appeals remanded this cause to the district court for the purpose of having the aforesaid matters brought to its attention in the form of a post judgment motion by the plaintiff-appellant, Secretary of Labor.

WHEREFORE, this motion.

Respectfully submitted,

GUSTAVE DIAMOND
United States Attorney

By:

STANLEY W. GREENFIELD
Assistant United States
Attorney

[fol. 63]

AFFIDAVIT IN SUPPORT OF MOTION THAT ELECTION OF OCTOBER 12, 1965 BE DECLARED INVALID AND FOR NEW SUPERVISED ELECTION—Filed April 8, 1966

STATE OF MERYLAND)
) SS:
COUNTY OF MONTGOMERY)

Now comes FRANK M. KLEILER, who first being duly sworn, deposes and says:

That I am the Director, Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor; and that under and by virtue of a General Order of the Secretary of Labor dated August 9, 1963, and published in 28 F.R. 9173, the duties of my office include the making of investigations required and authorized by the Labor-Management Reporting and Disclosure Act of 1959. ("LMRDA", 29 U.S.C. 401 *et seq.*).

That after such investigation, I am informed and believe as follows:

1. That a regular general election of Local Union officers was held by defendant Local 153, Glass Bottle Blowers Association of the United States and Canada, AFL-CIO (GBBA), on October 12, 1965, subsequent to the opinion and Judgment entered in Civil Action No. 64-278 by the Court on August 26, 1965.

[fol. 64] 2. That Article 4, Section 12 of the defendant Local Union Bylaws and Article 4, Section 13 of the defendant Local Union Bylaws, in issue in this case on the question of "reasonableness" within the meaning of Section 401(e) of the LMRDA, 29 U.S.C. 481(e), provide:

Article 4, Section 12:

> No member may be a candidate unless said member is in good standing and has attended seventy-five per cent (75%) of the regular local meetings since the last local election.

Article 4, Section 13:

> In cases where members have to work at the time of meetings, and so notify the Recording Secretary, they shall be marked present at such meetings, provided they notify the Secretary in writing within seventy-two (72) hours following the meeting.

3. That by the aforesaid opinion entered on August 26, 1965, this Court held that the attendance requirements imposed by the above Bylaws of defendant Local Union 153, namely, Article 4, Section 12 and Article 4, Section 13 are not reasonable qualifications for candidacy for union office in violation of Section 401(e) of the LMRDA, 29 U.S.C. 481(e).

4. That defendant Local Union conducted its regular general election of officers on October 12, 1965 with its aforesaid Bylaws, Article 4, Section 12 and Article 4, Section 13 remaining in full force and effect without change or amendment since the opinion and Judgment of this Court entered August 26, 1965.

[fol. 65] 5. That at the time of the election of officers on October 12, 1965, the defendant Local Union consisted of approximately five hundred (500) members, about the same number as in the previously challenged election held on October 18, 1963.

6. That under the aforesaid Bylaws of the defendant Union, Article 4, Section 12 and Article 4, Section 13; in effect at the time of the election on October 12, 1965; thirteen (13) members (or 2.6%) were eligible to run for office, only two more members than in the previously challenged election held on October 18, 1963.

7. That the following was the number of candidates for each office in the regular general election held on October 12, 1965:

President	1
Vice-President	2
Recording Secretary	1
Financial Secretary	2
Treasurer	2
Three Trustees	0

8. That in the election conducted by the defendant Local Union on October 12, 1965, as in the previously challenged election held on October 18, 1963, the President of the defendant Local Union appointed the three incumbent Trustees all of whom were ineligible under Article 4, Section 12 and Article 4, Section 13 of the defendant Union's aforesaid Bylaws.

[fol. 66] 9. That there were no members nominated and disqualified under the 75% attendance rule at the general election held by the defendant Union on October 12, 1965.

10. That there was no instance where the 75% attendance requirement was waived on behalf of any nominee for office.

/s/ FRANK M. KLEILER
FRANK M. KLEILER
Director
Office of Labor-Management
and Welfare-Pension Office

Sworn to and subscribed before me this 4th day of April, 1966.

/s/ R. CRESAP DORUS
Notary Public

My commission expires July 1, 1967.

[fol. 67]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 64-278

W. WILLARD WIRTZ, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

vs.

LOCAL 153, GLASS BOTTLE BLOWERS ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CIO (GBBA), DEFENDANT

ORDER OF COURT—May 27, 1966

AND NOW, this 27th day of May, 1966, upon consideration of plaintiff's motion for post-judgment relief, after hearing and argument, and it appearing that the purpose of the language in this Court's judgment of August 26, 1965, "retaining jurisdiction of the cause for such further action, if any, as may be required in the event that the Secretary shall have found cause to file a complaint by reason of alleged violations of the Act of similar character in connection with the next regularly ensuing election of officers of defendant union" was to expedite and accelerate the remedying of such future complaints as might arise out of future grievances involving alleged violations of the Act of similar character to those passed upon in said opinion; and the Court being now of opinion that perhaps the inclusion of said language was improvident as perhaps being inconsistent with the statutory scheme established for dealing with and remedying such grievances or violations, but the Court being of opinion that in any event the action which plaintiff now seeks [fol. 68] would not fall within the terms of such language; and the Court further being of opinion that in the election of October 12, 1965, with respect to which plaintiff is now seeking relief, the regulations condemned by this Court's

opinion of August 26, 1965, have not been demonstrated to have affected in any respect the outcome of the election, and that indeed such regulations did not come into play at all as there was nothing upon which they could operate, and that no candidates for union office were deterred or disqualified from being candidates by reason of application of said regulations (see par. 9 of affidavit of Frank M. Kleiler, submitted in support of plaintiff's motion); and the Court being satisfied by the statements and assurances of defendants' counsel at the hearing of May 26, 1966, that defendants in good faith and with due diligence are taking appropriate steps with all convenient speed to reform and amend the regulations governing elections so as to bring them into conformity with the views expressed in this Court's opinion of August 26, 1965; and the Court being of opinion that the period between August 26, 1965, the date of this Court's opinion, and October 12, 1965, the date of the subsequent election with respect to which plaintiff now seeks relief, was not sufficient time in which to effect in due course the reforms required in order to bring about conformity with the views expressed in this Court's said opinion of August 26, 1965; and the Court further being of opinion that before disrupting the existing election procedure, or the results thereof, as plaintiff now seeks, because of want of conformity unto the views ex-
[fol. 69] pressed in this Court's said opinion of August 26, 1965, defendants are entitled to await the outcome of the appeal now pending from this Court's judgment embodying said views, in order to be assured that said views are sound and acceptable legal doctrine and that the steps being taken by defendants to effect conformity therewith will not prove to have been a vain, transitory, needless and unfruitful burden,

IT IS ORDERED that the relief prayed for in said motion be and the same hereby is denied.

/s/ DUMBAULD
United States District Judge

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[fol. 70] LETTER DATED JUNE 22, 1966

June 22, 1966

Hon. Willard Wirtz
Secretary of Labor
U. S. Department of Labor
Washington 25, D. C.

Dear Secretary Wirtz:

In accordance with our conversations when we met in your office on June 13, 1966, I have prepared the following areas of excused absences that will be considered in applying the attendance requirements under the 75% rule provided by the Constitution of the Glass Bottle Blowers Association of the U. S. and Canada, Article 9, Section 1, in order to insure the greatest latitude for candidacy for local union office:

1. Absences due to illness of the member.
2. Absences due to illness of someone in the member's immediate family; that is, wife or child.
3. Absences due to attending to a family event such as departure of a son or daughter who is about to leave for the armed forces, or visiting a son or daughter in the armed forces. Also, attendance at the graduation of a son or daughter from school, or some similar family event.
4. Absences due to vacations.

[fol. 71] 5. Attendance at armed forces reserve meetings or training programs, or attendance at National Guard meetings or training programs.

6. Absences due to jury duty.
7. Absences due to death in the employee's family as defined in the collective bargaining agreement.
8. It could also be considered desirable to provide for the excuse of members who are absent from meetings due to participation in some important community event or community program. Also, absence

due to the participation by a member in attendance to his duties in a public office that he might hold, such as town council member, or school board member, or perhaps important meetings of a fire company to which he might belong. It would be difficult to list each and every type of event or meeting that would fall in this general category.

These excuses would be in addition to the historic excuse, that of being at work at the time that the meeting was called.

Consideration and granting of these various excuses should be on the requirement that the member seeking to be credited with attending a meeting though absent for any one of the aforementioned reasons make such request and that he state the reason therefor in a written note or statement to the recording secretary of the local union within 72 hours.

It would appear to me that in order that there be no question about the requesting of the credit for the absence [fol. 72] and the propriety of the reason therefor, that some writing emanate from the member seeking such credit and that the recording secretary be responsible to obtain and retain same.

I would also have no objection to Judge Dumbauld's suggestion, in the case involving Local Union # 153, that in any event at least 10% of the membership be eligible to be nominated as candidates for local union office.

I have continuously been in agreement that candidates for nomination and election as delegates to the Quadrennial Convention should not have their meeting attendance requirements computed since the last Quadrennial Convention as set forth in Article 2, Section 3 of the Constitution.

Rather, that meeting attendance should be computed on a two year basis similar to that for local union officers. My agreement to open-end the 75% meeting attendance requirement in accordance with the aforementioned is, of course, conditioned on the U. S. Department of Labor dismissing all suits against affiliates of, and/or, this International Union.

Upon receipt of your agreement, I shall immediately promulgate the aforementioned rules and regulations and make them available to all our local unions and members.

Sincerely yours,

LEE W. MINTON,
International President.

LWM:dd

[fol. 73] LETTER DATED AUGUST 22, 1966

U. S. DEPARTMENT OF LABOR
Office of the Secretary
Washington

Aug. 22, 1966

Mr. Lee W. Minton
International President
Glass Bottle Blowers' Association
of the United States and Canada, AFL-CIO
226 South 16th Street
Philadelphia, Pennsylvania 19102

Dear Mr. Minton:

The proposal outlined in your letter of June 22 has been carefully considered.

The proposed amendment to Article 9, Section 1 providing for additional excused absences and the proposed amendment to Article 2, Section 3 of the Constitution to compute attendance of delegate nominees on a two-year rather than four-year basis theoretically would mitigate the disqualifying effect of the 75% rule. From our experience in cases involving attendance requirements, however, it appears that most union members do not take timely action to obtain excuses for failure to attend meetings

even though they have grounds for being excused; and so I have little faith that the changes which you propose would substantially increase the number of members who would be eligible to run for office. I am afraid that we would continue to get cases in which only a few members besides the incumbent officers (who often are paid for performing union duties including attendance at meetings) would be eligible for nomination.

[fol. 74] Adoption of Judge Dumbauld's suggestion—that in no event should less than 10% of the membership be eligible for nomination—would reduce the unreasonable effects of the 75% attendance rule, but I think it would present some practical difficulties in its application. It would increase the burden on your local officers in determining which 10% of the membership would be considered eligible if less than 10% meet the 75% rule; and I suppose we would get complaints about the record checking and statistical work which would become necessary to operate under such a formula.

Furthermore, an inherent defect in the suggested 10% rule becomes readily apparent in cases involving small locals. Because your Constitution requires that eight local officers must be elected, application of the 10% rule would not provide sufficient candidates to fill all offices in locals with fewer than 80 members, and even in somewhat larger locals it would not provide sufficient candidates for a contest. Rather than adopt the 10% rule, I think you would be better advised to waive the attendance requirement in its entirety, as you sometimes have done when requested by local unions.

Although it is possible that the proposed amendments would reduce the number of election complaints emanating from the operation of the 75% attendance requirements, I do not think that your proposal provides an adequate basis for terminating the pending litigation.

Your efforts to resolve this matter are deeply appreciated.

Sincerely,

W. WILLARD WIRTZ,
Secretary of Labor.

[fol. 75] STATUTES INVOLVED

Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U. S. C. 401 et seq., provides in pertinent part:

Declaration of Findings, Purposes, and Policy

Sec. 2(a). The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

Terms of Office: Election Procedures

Sec. 401(b). Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

Sec. 401(e). In any election required by this section which is to be held by secret ballot a reasonable oppor-
[fol. 76] tunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have

been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

Enforcement

Sec. 402(a). A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies with-
[fol. 77] out obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

Sec. 402(b). The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States

in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

Sec. 402(c). If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401, or

[fol. 78] (2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

[fol. 79]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 15759 and 16048

[File Endorsement Omitted]

W. WILLARD WIRTZ, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR, APPELLANT

v.

LOCAL 153, GLASS BOTTLE BLOWERS ASSOCIATION OF THE
UNITED STATES AND CANADA, AFL-CIO (GBBA)

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Argued November 14, 1966

Before: MCLAUGHLIN, KALODNER and HASTIE, *Circuit Judges.*

OPINION OF THE COURT—Filed December 16, 1966

By HASTIE, *Circuit Judge.*

Section 402(b) of the Labor-Management Reporting and Disclosure Act of 1959, 73 STAT. 519, 534, 29 U.S.C. § 482(b), provides in part that whenever the Secretary of

Labor's investigation of a complaint made by a member of a local union gives him probable cause to believe that rights to be a candidate or to vote in an election of union officers, or to hold union office, as protected by section [fol. 80] 401(b) and (e) of the Act, have been violated, the Secretary "shall . . . bring a civil action against the labor organization . . . to set aside the invalid election . . . ." This is such an action. The complaint filed in March, 1964, alleges that, through investigation of a complaint by a union member, the Secretary has found probable cause to believe that Glass Bottle Blowers Local 153 violated section 401(b) and (e) of the 1959 Act in its 1963 nomination and election of union officers. The complaint asks for a judgment "declaring the election held by the defendant union on October 18, 1963, to be null and void" and "directing the conduct of a new election under the supervison of the plaintiff".

After pretrial procedures extending over more than a year, the case was tried to the district court without a jury. In August, 1965, the court filed an opinion and caused judgment to be entered dismissing the complaint. The court found that the union's international constitution and local by-laws unlawfully restricted the eligibility of members to be candidates for union office. However, it also found that the evidence did not establish that this violation "may have affected the outcome" of the 1963 election, a requirement which section 402(c) expressly makes prerequisite to the judicial granting of relief.

The Secretary appealed from this judgment. However, while this appeal was pending, he also sought and obtained from this court an order remanding the cause to the district court, without relinquishing jurisdiction for the review of the original judgment, for the purpose of entertaining and adjudicating a post-judgment motion for further relief.

Upon remand, the Secretary filed a post-judgment motion alleging under oath that the union had elected new officers on October 12, 1965 under the same restrictions upon eligibility for office that had been the subject of the complaint with reference to the 1963 election and asking

[fol. 81] that the 1965 election be invalidated and a new election ordered under the Secretary's supervision. The court denied this motion, ruling on the merits of the motion "that no candidate or candidates for union office were deterred or disqualified from being candidates by reason of application of said regulations".

The case is now before us upon separate appeals from the original judgment and from the order denying the post-judgment motion.

We hold that the 1965 election of officers, as disclosed in the post-judgment motion, made the original action challenging the 1963 election moot. This question has very recently been considered and decided by the Court of Appeals for the Second Circuit. *Wirtz* v. *Local Unions 410, 410A, 410B, & 410C, Int'l. Union of Operating Engineers*, 1966, 366 F.2d 438. That court reasoned as follows:

> "The exclusive remedy which Congress has created for challenging a union election, see 29 U.S.C. § 483, is a suit by the Secretary to declare the election void and to direct the conduct of a new election . . . ."
>
> ". . . It would serve no practical purpose with respect to these locals to declare their 1962 elections void because the terms of office thereby conferred have expired. And because Title IV does not permit the Secretary to seek either to enjoin future elections, or to declare a given candidacy requirement unlawful absent a valid complaint and an investigation of its application to a specific election, . . . we conclude that we have no power to afford the Secretary relief and therefore that these cases are moot." 336 F.2d at 442.

To us this reasoning is persuasive and requires no elaboration. The Secretary's original action, based upon the 1963 election, is now moot.

We have also considered the so-called post-judgment motion as in substance an amended or supplementary [fol. 82] complaint attacking the 1965 election. However, that new challenge to the 1965 election must fail because no member of the union has filed with the Secretary a complaint seeking to invalidate that election.

For whatever reasons, Congress, in enacting the inforcement provisions contained in section 402, did no more than to provide an administrative and judicial procedure for determining the legality of a particular election of local union officers. The only suit authorized under section 402 is a suit by the Secretary to set aside that election of which an aggrieved unionist has complained. *Wirtz* v. *Local Unions, 410, 410A, 410B, 410C, Int'l. Union of Operating Engineers, supra; Wirtz* v. *Local 191, Int'l. Brotherhood of Teamsters*, D.Conn. 1963, 218 F. Supp. 885, *aff'd*, 2d Cir. 1963, 321 F.2d 445. Therefore, absent a complaint by a union member challenging the 1965 election, the Secretary had no authority to sue to establish the invalidity of that election. The denial of the post-judgment motion was proper, although we so decide for a reason different from that given by the court below.

While this action must be dismissed, we think it appropriate to make the additional observation that it is within the power of the Secretary to prevent such a controversy as was presented by his original complaint here from becoming moot. The available remedy, as pointed out by the Court of Appeals for the Second Circuit, is a proceeding "to enjoin a union from holding an election, or from giving effect to one already in process, where it is apparent that the Secretary is likely to succeed in his claim that the election under which the union's officers are currently serving was conducted in violation of the requirements of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 481, where the impending balloting is apparently being conducted under substantially similar conditions, where it also appears that such injunction will not cause serious injury to the unions [fol. 83] concerned, and where the Secretary is likely to suffer a very real detriment in his attempt to enforce the law if such restraining order is not granted". See *Wirtz* v. *Local Unions Nos. 545, 545-A, 545-B and 545-C, Int'l. Union of Operating Engineers*, 2d Cir. 1966, 366 F.2d 435, 436. The court directed that the requested injunction issue.

In addition to granting such relief, we are sure that this court and the district courts in this circuit will, upon

request, expedite the hearing and disposition of cases in which the Secretary challenges the validity of union elections in order that disruptive disputes over the right and title of union officers may not be unduly protracted.

Finally, the Secretary contends that, in ruling adversely upon his contention that the illegal disqualification of candidates "may have affected the outcome" of the 1963 election, the district court misconstrued the statute and treated it as requiring proof that the illegal conduct did in fact affect the outcome of the election. The mootness of the controversy makes it unnecessary to decide that question. However, we think we should not permit the decision below to stand as a precedent on this contested issue which we have declined to review.

Accordingly, the judgment on the merits of the principle controversy and the order denying post-judgment relief will both be vacated and the cause remanded with instructions to dismiss the original complaint as moot and also to dismiss the motion for post-judgment relief for lack of a prerequisite complaint by a union member.

* * * * *

[fol. 84]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 15,759 and 16,048

[File Endorsement Omitted]

W. WILLARD WIRTZ, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR, APPELLANT

vs.

LOCAL 153, GLASS BOTTLE BLOWERS ASSOCIATION OF THE
UNITED STATES AND CANADA, AFL-CIO (GBBA)

(D. C. Civil Action No. 64-278)

ON APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Present: MCLAUGHLIN, KALODNER and HASTIE, *Circuit Judges.*

JUDGMENT—December 16, 1966

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed August 26, 1965, and the order denying post-judgment relief, filed May 27, 1966, be, and the same are hereby vacated and the cause remanded with instructions to dismiss the original complaint as moot and also to dismiss the motion for post-judgment relief for lack of a prerequisite complaint by a union member.

ATTEST:

/s/ [Illegible]
Clerk

December 16, 1966

Certified as a true copy and issued in lieu of a formal mandate on January 12, 1967.

Test:

/s/ THOMAS F. QUINN
Clerk
United States Court of Appeals
for the Third Circuit

[fol. 85]

SUPREME COURT OF THE UNITED STATES

No. 1115, October Term, 1966

W. WILLARD WIRTZ, SECRETARY OF LABOR, PETITIONER

v.

LOCAL 153, GLASS BOTTLE BLOWERS ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CIO

ORDER ALLOWING CERTIORARI—May 15, 1967

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 287989 1014